UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-20526-CIV-GOLD/MCALILEY

KLAUS HOFMANN, an individual,

Plaintiff,

v.

EMI RESORTS INC., a foreign corporation, *et al*.,

Defendants.

CORPORATE DEFENDANTS' OBJECTION TO SPECIAL MASTER THOMAS E. SCOTT'S REPORT AND RECOMMENDATION FOLLOWING PRELIMINARY FORENSIC ANALYSIS [D.E. 832]

EMI Resorts Inc., EMI Sun Village Inc., HSV Operadora de Hoteles, S.A., EMI Resorts Management, S.A., EMI Resorts (S.V.G.) Inc., EMI Cofresi Developments Inc., Sun Village Juan Dolio Inc., Promotora Xara, S.A., Elliott Miches Holdings Inc., Inversiones Yubaso, S.A., Inmobiliaria Lirios Del Tropico, S.A., Inmobiliaria Canadaigua, S.A., HSV Holdings, S.A., Desarrollos Mirador Cofresi, S.A., Tenedora HSV [B.P.], S.A., Villa Santa Ponca, S.A., Bertus Management Inc., CCW Dominicana, S.A, Cofresco Holdings Inc., Inmobiliaria Moncey, S.A., Cellwave Networks Limited and WWIN International Limited (collectively, the "Corporate Defendants"), by and through undersigned counsel and pursuant to Fed. R. Civ. P. 53(f)(2) file this *Objection* ("Objection") to Special Master Thomas E. Scott's *Report and Recommendation Following Preliminary Forensic Analysis* (the "Report") [D.E. 832]. In support hereof, the Corporate Defendants state as follows:

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PRELIMINARY STATEMENT

Pursuant to Rule 53(f)(2) of the Federal Rules of Civil Procedure, the Corporate Defendants object to the Report of Thomas E. Scott (the "Special Master") based on the numerous factual inaccuracies, improper legal conclusions and misleading and grossly prejudicial statements which permeate the Report. Instead of providing a forensic report, the Special Master provided what amounts to a prosecutor's bill of indictment or at the very least improper advocacy for the Plaintiffs, drawing improper inferences and legal conclusions without affording the Corporate Defendants (or any of the professionals or third-parties pilloried by the Special Master's reckless accusations) due process or even an opportunity to address, correct, or provide explanations for the Special Master's incorrect assumptions and conclusions prior to their publication. Unfortunately, it appears that the Special Master has taken up the mantle of advocate, and in so doing; has laid down any legitimacy as a neutral adjunct of this Court.[1] As such, the Special Master cannot be relied upon to provide the Court with unbiased reporting and reliable recommendations and his appointment should therefore be revoked.

The Special Master has (1) exceeded the scope of his mandate to produce a forensic report by developing and attempting to prove a "two-tier RICO liability theory of the case" in order to reach his ultimate conclusion that the Corporate Defendants, their principals and indeed their professionals are guilty of criminal conduct;[2] (2) made numerous inaccurate factual and legal statements and conclusions; and (3) deprived the Corporate Defendants of their due process

[1] *See Jenkins v. Sterlacci*, 849 F.2d 627, 632 (C.A.D.C. 1988) ("[A] an individual who accepts an appointment as a special master [must] scrupulously avoid any undertaking, as an advocate or otherwise, that would tend or appear to compromise his impartiality as a decision maker.")

[2] In some instances, the Special Master categorically states there has been criminal conduct; in some cases he suggests it. Either way, the result is that serious allegations have been levied against the Corporate Defendants, their principals and professionals even though the evidence supporting such conclusions is unknown to the Corporate Defendants and unchallenged by application of the Federal Rules of Evidence.

rights by relying upon an incomplete evidentiary record which has not been seen or challenged by the Corporate Defendants.

Additionally, the Special Master has exposed a rank bias in favor of the plaintiffs in this case by drafting his Report to read like a prosecutor's bill of indictment which defames the Corporate Defendants, their principals and professionals.

The Special Master's conclusions are remarkable when one considers that the Special Master's Report is, in his own words, based on a "preliminary" forensic analysis of information provided by "Elliott Defendants" and "other available information" which includes information from "within the court record and as provided by individual investors or those who were assisting them." However, it is inappropriate for the Special Master to make allegations of criminal conduct like a prosecutor when he is supposed to be a neutral adjunct of this Court.[3]

The Court must restore the balance between the parties and afford the Corporate Defendants due process by conducting a *de novo* review of the facts and legal conclusions made by the Special Master. However, since the Special Master has opined as to the ultimate facts in this case, due process demands that any *de novo* review of the facts alleged by the Special Master in his Report come only at trial on the underlying merits.[4] In this way, the usual discovery process can be employed and the Federal Rules of Evidence applied.

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[3] *See e.g. Allapattah Svcs. Inc. v. Exxon, Corp., 454 F.Supp. 2d 1185, 1198 (S.D.Fla. 2006) (referring to neutral special master); Robinson v. Shelby Cty. Bd. Of Educ*., 566 F.3d. 642, 666 (6th Cir. 2009) (referring to District Court's description of special master as "neutral"); *Wallace v. Abell*, 318 Fed.Appx. 96, 99 (3d Cir. 2009) (describing special master as "neutral adjudicator"); *In re Holocaust Victim Assets Litigation*, 424 F.3d. 132, 137 (2d Cir. 2005) (referring to "neutral special master"); *Miyake v. Sec. of Health and Human Svcs*., 2009 WL 959563 at * 11 (Fed.Cl. Mar. 19, 2009) ("As the neutral party, the special master is the best position to consider what is in the best interest of the injured person.").

[4] Although the Court has set a one hour hearing on the objections to the Special Master's Report, [D.E. 873] the Corporate Defendants, respectfully, are unsure what can be accomplished at such a brief hearing when the Corporate Defendants have not been able to see or challenge the

In the interim, the Corporate Defendants respectfully request that the Court (1) disregard the factual and legal conclusion made in the Report, (2) order that no party may refer to the factual or legal conclusions made in the Report as determined fact or law, (3) order that this Objection be posted on the Hofmann Plaintiff's website as was the Report; and (4) remove the Report from the "Orders and Opinions" section of the Southern District of Florida's website.[5]

BACKGROUND

1. On May 22, 2009, the Court entered its *Interim Order Following Hearing on Preliminary Injunction; Preliminarily Appointing Special Master* (the "Appointment Order") [D.E. 348], pursuant to which the Court preliminarily appointed Thomas E. Scott as Special Master pursuant to Fed.R.Civ.P. 53.

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sufficiency of any evidence relied upon by the Special Master in forming his conclusions or to otherwise avail themselves of normal discovery procedures. Accordingly, while the Corporate Defendants are prepared to point out some of the more egregious errors in the Special Master's Report and otherwise advise the Court of the due process ramifications to the Corporate Defendants of the Report, the Corporate Defendants respectfully submit that the one hour hearing set for January 25, 2009 should not serve as the Court's *de novo* review.

[5] Although the exact timing is unknown to the Corporate Defendants (discovered by the undersigned on December 1, 2009), at some point the Report was linked on the website of the Southern District of Florida in the "Orders and Opinions" section, even though the Report is not an "Order" or "Opinion" of the Court. To the extent the Court ordered the inclusion of the Report on the Southern District of Florida's website as an "Order or "Opinion," the Corporate Defendants object. Due process, as well as Fed.R.Civ.P. 53(f)(2) demand that the Corporate Defendants have an opportunity to object to the Report prior to the Court imposing its imprimatur as it has done by posting the Report on the Southern District website. By filing the Report on the Southern District's website, prior to the expiry of the objection period, and prior to any hearing on objections to the Report which must be reviewed *de novo* absent agreement of the parties, such filing gives the impression to the public, and more importantly to the plaintiffs in this case, that the Court has prejudged the entire case, uncritically accepted the Report without conducting a *de novo* review, and abdicated responsibility as the ultimate fact-finder to the Special Master in this case. To the extent this was not the intent of the Court, the link to the Report on the Southern District website should be removed immediately, as its very inclusion as an "Order or Opinion" is highly prejudicial to the Corporate Defendants and their due process rights, prejudice from which the Corporate Defendants may be unable to recover.

2. On September 21, 2009, the Court entered its *Omnibus Order Regarding Report and Recommendations and Following Hearing* (the "Omnibus Order") [D.E. 714] pursuant to which the Court, among other things, authorized the Special Master to "continue his forensic examination of the records and information obtained to date, and to provide a report on the forensic examination." Omnibus Order at 2.

3. On November 12, 2009, the Special Master issued his *Report and Recommendation Following Preliminary Forensic Analysis* (the "Report") [D.E. 832].

4. On November 17, 2009, the Court entered its *Order Requiring Plaintiffs' Counsel to Post [D.E. 832] on Website* [D.E. 840], pursuant which plaintiffs' counsel was required to post the Report on "any and all websites that plaintiffs' counsel uses to communicate with clients and investors."

STANDARD OF REVIEW

5. Rule 53(f)(3) of the Federal Rules of Civil Procedure provides:

> The court must decide *de novo* all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:
>
> (A) the findings will be reviewed for clear error; or
>
> (B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

Fed.R.Civ.P. 53(f)(3).

6. Here, the parties have not stipulated that the findings of the Special Master be reviewed for clear error, or that the findings of the Special Master will be final. "As the use of the phrase *de novo* commands, the district court's consideration of the factual issue must be independent and based upon the record before the court." *LoConte v. Dugger*, 847 F.2d 745, 750 (11th Cir. 1988).

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7. Relatedly, Rule 53(f)(4) provides that the court must decide *de novo* all objections to conclusions of law made or recommended by a master. Fed.R.Civ.P. 53(f)(4).[6]

8. As such, the Court must conduct a *de novo* review of the record with respect to objections to both factual and legal conclusions made by the Special Master in the Report, and the appropriate and logical time for the Court to conduct its *de novo* review is at the time of trial on the underlying merits of this case.[7]

9. The relationship between a special master and the district court is essentially the same as the relationship between a trial court and an appellate court. A master can schedule his own proceedings, subpoena witnesses and conduct hearings subject to the Federal Rules of Evidence.[8] Any findings made by a special master in a jury trial are presented to the jury, whereas findings made by a special master in a non-jury trial are typically reviewed under a clearly erroneous standard.

10. However, where, as here, a special master's report is based upon his own observations and investigations in the absence of a formal hearing, such a report "not only transcends the powers traditionally given masters by courts of equity, *but denies the parties due process*."[9] For example, in *Ruiz v. Estelle*,[10] the Fifth Circuit modified an order of reference to a

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[6] *See Cooper-Houston Southern Ry. Co.*, 37 F.3d. 603, 604 (11th Cir. 1994); *Gutter v. E.I. Dupont De Nemours*, 124 F.Supp.2d. 1291, 1303 (S.D.Fla. 2000).

[7] *See Dept. of Educ., Hawaii v. Karen I.*, 2009 WL 3378587 at *2, (D.Hawai'i, Oct. 20, 2009) ("Pursuant to Rule 53(f) of the Federal Rules of Civil Procedure, this court reviews *de novo* all objections to findings of fact and conclusions of law made or recommended by a special master."); *Grace v. City of Detroit*, 341 F.Supp. 2d 709, 714 (E.D.Mich. 2004)("The parties have not stipulated to make the Special Master's factual findings final or reviewable only for clear error. Accordingly, pursuant to Rule 53(g) this Court must decide the Plaintiff's objections to the Special Master's findings of fact and conclusions of law in his Report(s) *de novo*.").

[8] *See* Fed.R.Civ.P. 53(c).

[9] *Ruiz v. Estelle*, 679 F.2d 1115, 1162-63 (5th Cir. 1982) *vacated in part, on other grounds* 688 F.2d 266 (5th Cir. 1982) *cert denied*, 460 U.S. 1042 (1983) (emphasis added).

special master to make clear that "unless based on hearings conducted on the record after proper notice, the reports, findings, and conclusions of the special master are not to be accorded any presumption of correctness and the 'clearly erroneous' rule will not apply to them." The court in *Albeti v. Klevenhagen*:[11] similarly held that:

> Any report, finding, recommendation, conclusion or other writing filed by the Fact Finding Special Master which is not based on [ ] a procedurally fair hearing shall not be accorded any presumption of correctness, nor shall the "clearly erroneous" rule apply thereto.

Albeti v. Klevenhagen, 660 F.Supp. at 611.

11. Here, the Special Master's Report is not based on hearings conducted on the record after proper notice. Indeed, it is not entirely clear exactly upon what the Special Master bases his conclusions. As such, the findings and conclusions set forth in the Report are not entitled to any presumption of correctness. Indeed, as more fully discussed below, his findings and conclusions are demonstrably incorrect. Based on the foregoing, the Court must conduct a *de novo* review of the Special Master's findings of fact and conclusions of law.

OBJECTION

12. The Corporate Defendants object to the Special Master's Report for the following reasons: First, the Special Master has exceeded the scope of his mandate set in the Appointment Order. Second, the Special Master's factual and legal conclusions are (1) not based upon hearings conducted on the record after notice, (2) inaccurate (and therefore unreliable) and finally, the Special Master has exposed a bias towards the plaintiffs in this case, and otherwise materially and adversely affected the due process rights of the Corporate Defendants. Through his Report, the Special Master has supplanted his judgment for the Court's by passing on the civil

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[10] *Id.*

[11] 660 F.Supp. 605 (S.D.Tex. 1987).

and criminal liability of various parties without revealing his evidence for such conclusions and without ever having held hearings at which the Corporate Defendants should have been afforded due process to examine and challenge any evidence against them.

The Special Master Has Exceeded the Scope of his Mandate to Produce a Forensic Report

13. Pursuant to Fed.R.Civ.P. 53(b)(2), an order appointing a special master must include "the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c)." *Satyam Computer Svcs., Ltd. v. Venture Global Eng'g, LLC*, 2007 WL 1806198 at * 6 (E.D. Mich. June 21, 2007). The Appointment Order prescribes the scope of the Special Master's duties and further ordered the Special Master to meet and confer with the parties to this case by June 5, 2009 and establish, among other things, a revised scope of the Special Master's duties (if he and the parties deemed it necessary) by June 22, 2009. However, the Appointment Order is silent with respect to limits on the Special Master's authority, and there is no indication on the Court's Docket that the appointment of the Special Master was ever made final or that the scope of the Special Master's duties were revised *by agreement of the parties* as contemplated by the Appointment Order. However, the Special Master's duties were effectively expanded when the Court appointed the Special Master as its Monitor on July 17, 2009 pursuant to the Court's *Order Following Hearing on Plaintiffs' Joint Motion for Order to Show Cause* [D.E. 474]; *Appointing Monitor by Agreement of the Parties* (the "Monitor Order") [D.E. 528].[12]

14. Neither the Appointment Order nor the Monitor Order commissioned the Special Master to undertake what is essentially the burden of the plaintiffs in this case to set forth a theory of liability and then prove it. However, this is exactly what the Special Master has

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[12] The Monitor Order has been appealed by the Corporate Defendants in the case styled Klaus Hofmann v. EMI Resorts Inc., Case No. 09-14183 (11th Cir.).

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attempted. Specifically, the Special Master has asserted as fact the existence of a "two-tier" criminal enterprise:

> The first tier involves the Elliotts (and their companies, employees, agents and attorneys) and James Catledge (and his Impact-related entities, employees, agents and possibly attorneys) in the development, marketing and sales of fractional and/or timeshare units . . .which amounted to a Ponzi-style scheme and including the taking of exorbitant commissions. . . .
> The second tier relates solely to the Elliotts' (and their companies', employees', agents' and attorneys') mismanagement (at times gross mismanagement, at other times fraudulent) and/or essential theft of investor monies.

Report at 6-7.

15. As seen by the excerpt above, the Special Master, as an adjunct of this Court, has categorically stated the existence of criminal activity of the Corporate Defendants, their principals, employees, agents and professionals. It is one thing for such baseless allegations to be made by plaintiffs pursuant to a complaint in a civil case where such allegations can be tested pursuant to due process and the plaintiffs put to their proofs. It is quite another for such incendiary allegations to be leveled against a defendant in a civil case by an adjunct of the Court without so much as a complete evidentiary record before it, and where the subjects of such allegations have had no opportunity to examine, challenge or explain whatever evidence supposedly supports such allegations which are then served up as conclusions of fact and law.

16. Additionally, the Special Master has supplanted his judgment for that of the Court and ultimately the Jury, when he concludes that "[t]here is enough and sufficient information available which establishes a reasonable and supportable conclusion that criminal activities have occurred and/or are still ongoing." Report at 5.

17. The Special Master improperly acts as the ultimate fact-finder when he states "the Plaintiffs' original complaints filed in this matter (the separate Hoffman and Aguilar complaints) are, in large measure, factually correct based upon the information and documentation we have

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analyzed with one major exception. The allegations in both complaints omit any allegation against James Catledge and the Impact-related companies and agents." Report at 5, fn. 5. This is a *huge* exception, since the Corporate Defendants maintain as part of their defense that Catledge and the Impact-related companies and agents are responsible for the investors' losses.

18. More to the point, how can the Special Master claim the information in the Aguilar Plaintiffs' complaint is factually correct when the Court has ruled that the Aguilar complaint failed to state a claim, and the Aguilar Plaintiffs' subsequently voluntarily dismissed their case?[13]

19. Based on the fact that the Special Master has exceeded the scope of his authority and supplanted the judgment of this Court and ultimately the Jury, the Report must be disregarded.

The Special Master's Report is Factually and Legally Inaccurate

20. Although the Corporate Defendants object to the Report *in toto*, the Corporate Defendants respond to some of the more egregious examples of incorrect statements of fact and conclusions of law as set forth below.[14]

[13] *See The Aguilar Plaintiffs' Notice of Voluntary Dismissal Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i)* [D.E. 88, Case No. 09-20657].

[14] Unfortunately, the Corporate Defendants are unable to fully respond to the Report because they have had no access to their corporate books and records since the Special Master removed them from the Dominican Republic, upon information and belief, in violation of the laws of the Dominican Republic. Moreover, the Special Master refrained from describing with any particularity what evidence was being withheld because of judicial privilege, work product or the fear of impeding a criminal investigation. Report at 5. Accordingly, the Corporate Defendants reserve their right to object further to the Report at such time as the Court conducts its *de novo* review which should be at trial on the underlying merits of the case.

Allegations of "Ponzi" or "Ponzi-style" Scheme

21. At page 6 of the Report, the Special Master refers to "the development, marketing and sales of fractional and/or timeshare units at Juan Dolio and Cofresi" as a "Ponzi-style scheme," which he alleges included the taking of "exorbitant commissions."

22. The Special Master provides no support for his claim that commissions were "exorbitant," nor is there any evidence as to any qualification he may have to authoritatively express such an opinion. In fact, overall commission and marketing cost levels of 40%-60% of gross sales proceeds are quite standard in the timeshare industry. Developers of timeshare products are prepared to pay such costs, provided they are delivered compliant, enforceable sales, which, unbeknownst to the Corporate Defendants, Catledge/Impact completely failed to provide.

23. As for the Special Master's "Ponzi" allegation, this merely parrots the unsubstantiated allegations in the Hofmann Plaintiff's original Complaint (as well as in the Aguilar and Hofmann Plaintiffs' defamatory publicity campaign that followed), which attempted to fabricate a civil RICO claim. The Special Master provides no substantiation, no particulars and no explanation as to his rationale for parroting this allegation. In fact, there was no Ponzi or "Ponzi-style" scheme. There was no doubt reckless disregard shown for the interests of all parties by Catledge/Impact, but for the Special Master to assert that the Corporate Defendants engaged in a Ponzi-style scheme without affording due process in indicative of his bias in this matter..

24. A "Ponzi scheme" is defined (by The American Heritage Dictionary of the English Language, Fourth Edition c. 2009) as: "A fraud disguised as an investment opportunity, in which initial investors and the perpetrators of the fraud are paid out of funds raised from later investors, and the later investors lose all funds invested."

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25. This definition was never applicable to the fractional ownership and timeshare products offered by certain of the Corporate Defendants, for the following reasons:

a. **All Sales Were Covered by Inventory** – There was no "fraud" (a necessary component of a Ponzi) because all fractional and timeshare sales at both Cofresi and Juan Dolio were fully covered by inventory. All purchasers were specifically allocated timeshare intervals or fractions in units that matched their purchases.

b. **The Juan Dolio and Cofresi Properties had Enormous Value** – According to the Cofresi appraisal [DE 508] and the Juan Dolio appraisal (attached hereto as "**Exhibit A**"), which were commissioned to be done by certain of the Corporate Defendants by independent appraisers, these two properties had an April, 2009 value, net of mortgages, of over $100,000,000. Both projects were viable. Cofresi was virtually 100% complete and it was an operating resort with an excellent reputation. Juan Dolio was 75% complete (discussed *infra* at ¶ 75). The Juan Dolio business plan, filed at DE 241, demonstrated that there was a viable plan for completing the Juan Dolio project and meeting the project's obligations. It was not the actions, inactions or "scheming" of the Corporate Defendants that destroyed these businesses and their value. Rather, it was the deliberate strategy of the Hoffman Plaintiffs, the Aguilar Plaintiffs, their respective attorneys and, most importantly, their true "puppet master," James Catledge, (utilizing the litigation, the publicity campaign, direct contacts with suppliers, customers and banks and the improper Dominican injunctions in an effort to obfuscate his own misdeeds) to drive these businesses and the so-called "Elliott Defendants" (including the Corporate Defendants) out of business and into the ground. This they have virtually succeeded in doing, destroying over $100,000,000 worth of assets and any real hope of any recovery by any such Plaintiffs. The Special Master added insult to injury through his

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mishandling of his "Monitor" duties (pursuant to the July 17, 2009 Order [D.E. 528], which is under appeal), which was the final nail (or series of nails) in the coffins of these projects.

c. **Non-Use Fees were not Guaranteed** – Any references to "guaranteed" payments were concoctions of the rogue Catledge/Impact sales force, as more fully discussed *infra* at ¶¶ 39-42 herein.

d. **Non-Use Fees were Budgeted** – The payment of non-use fees during the construction period at both Cofresi and Juan Dolio was budgeted as essentially the equivalent of the cost of construction financing. The overall amount actually paid ($12,068,382, as set out at page 12 of the Report) was consistent with what the Corporate Defendants reasonably believe construction financing interest costs would have amounted to.

e. **Residence Sales were Intentionally Stopped** – It became apparent, in May-June, 2008, that the Cofresi and Juan Dolio projects were experiencing financial difficulties, partially due to the deteriorating economy and ongoing financial meltdown, which began in late 2007. It was recognized that these projects would have difficulty continuing to pay non-use fees (which were beginning to exceed anticipated and acceptable levels). As a result, the sale of Residence timeshare interests was halted and the payment of non-use fees was suspended (in anticipation of a restructuring). These steps are hardly consistent with the carrying on of a Ponzi scheme. In fact, they are diametrically opposed to the steps that a Ponzi perpetrator would have taken.

f. **The Plaintiffs Refused to pay on their Promissory Notes** – As discussed in the Juan Dolio business plan [D.E. 241], Juan Dolio was owed approximately $32,000,000 in promissory notes, taken as part of the sale price for fractional interests.

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Commissions had been fully paid to Catledge/Impact on these notes. Collection of the notes would have generated sufficient proceeds to fully pay out the Juan Dolio banks and complete the project. Therefore, at the outset, when the notes were received, Sun Village Juan Dolio Inc. had every expectation that it would be able to fully deliver on all sale obligations. It could not have been foreseen that the Catledge/Impact masterminded litigation and business destroying strategy would essentially repudiate the notes (without, of course, a concomitant refund of the commissions paid thereon). A loss of this magnitude would have been devastating to any enterprise. It is disingenuous in the extreme for the Plaintiffs (and the Special Master) to re-characterize the Juan Dolio and Cofresi projects as a "Ponzi-style scheme" in the face of their very significant contribution to the failure of the business model.

Management Fees

26. On page 23 of the Report, the Special Master states:

> [T]he Elliotts authorized payment to EMI Resorts, Inc. (their company) of a 5% management fee on the *gross* income of the Resort. In combination with the other actions discussed herein, this conduct by the Elliotts (and those assisting them and profiting from them) is possibly criminal and it should be thoroughly investigated and/or prosecuted.

Report at p. 23.

27. At the EMI Sun Village Inc. ("EMISV") level all management fees payable to EMI Resorts Inc. and other Elliott entities were approved by shareholders' resolutions, which were passed at annual or special meetings of the EMISV shareholders. The 5% management fee on the gross income of the Sun Village Cofresi Resort is an industry standard rate. This is not unusually high or outlandish. In any event, the applicable management agreements and the fees payable thereunder were all authorized, ratified and approved by EMISV shareholders. The

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Special Master's statement that these management fees were "unwarranted and undeserved"[15] is completely unsubstantiated and contrary to the actual facts.

Assignment to Aviati

28. On page 15 of the Report, the Special Master states:

> Moreover, they also allegedly "sold" to Inversiones Aviati, S.A. a significant portion of outstanding investor promissory notes, and Aviati threatened to "foreclose" on those notes unless they were paid. This was another continuing ruse of the Elliott's to generate more cash and to get out of the position of having to pay additional NUF's. Of course, the Elliott's to this day maintain that Aviati was an independent third party. Aviati was not an independent third party. It was (and is) partly owned by Chery Jimenez, who is the same individual who was acting as the Elliott's business consultant at the Cofresi Resort since about March 2009. Supposedly, Aviati paid $450,000 for the approximate $14,000,000 in promissory notes at Juan Dolio (in a conversation with the manager, Jimenez said that Aviati paid over $650,000 in expenses on the Elliott's behalf.

Report at p. 15.

29. The Aviati agreement was entered into in the fall of 2008 (not "after the instant lawsuit was filed [March, 2009]", as the Special Master suggests at page 16 of his Report.). This is how Frederick Elliott became acquainted with Chery Jiminez, who Frederick later asked for consulting assistance with respect to financial matters (in or about March, 2009). The relationship was entirely arms' length at the time the Aviati agreement was entered into. As for the Aviati agreement itself, it was always based on a "pay as you go" arrangement. In other words, Aviati was to collect on the Juan Dolio vendor take-back notes, retain approximately 26% of what they collected and pay the balance to Juan Dolio. Had the entire $13,261,743 worth of notes "assigned" to Aviati been collected, this would have yielded approximately $9.8 million for Juan Dolio, more than enough to pay out the Juan Dolio banks. There was a total of approximately $32 million in Juan Dolio notes, so not all of them were assigned to Aviati. Sun Village Juan Dolio Inc. was in the process of making instalment payment arrangements (with

[15] *See* Report at p. 23.

various structures) with the remaining payors. Had all the remaining notes been collected, this would have yielded more than enough to complete construction at Juan Dolio.

30. At the end of the day, Aviati apparently never collected a cent on the notes (likely because of the Plaintiffs' essentially self-destructive campaign to undermine this effort). Therefore, the monies paid by Aviati were merely advances on anticipated receipts and are now repayable.

31. "Foreclosing" on the notes in question has nothing to do with avoiding payment of NUFs, as the notes related to fractional sales and the NUFs relate to Residence timeshare sales. The Special Master seems to view these very different products as interchangeable, which evidences his lack of understanding of both and the likelihood that he has failed to review the underlying documentation for either.

WWIN International Limited

32. On page 25 of his Report, the Special Master states that "WWIN International Ltd. [sic] is by all appearances a money laundering vehicle and set up for the purposes of tax evasion…" This statement is yet another outlandish unsupported statement that evidences the Special Master's bias in this matter.

33. Contrary to the Special Master's assertion, WWIN International Limited ("WWIN") was not a money-laundering/tax evasion vehicle. WWIN was established in late 1999 - early 2000 by Greg Clark, the former CFO of the Elliott Group. Clark arranged for the incorporation of the various WWIN corporate entities. Further contrary to the Special Master's assertion (at page 25 of the Report), Frederick Elliott's involvement in the set up of WWIN was *de minimis*. WWIN's business consisted primarily of acting as agent for the issuance of debit cards by foreign banks. WWIN worked with a number of international banks. There was no

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illegality in connection with the banks' issuance of debit cards or WWIN's acting as agent in relation to the issuance of such debit cards.

34. WWIN's acting as agent in this regard was no more "illegal" than the issuance of the debit cards themselves by the aforementioned banks. WWIN took extraordinary steps to ensure that it was fully compliant. In this regard, the WWIN application package included (without limitation):

(a) a requirement that the applicant provide two notarized copies of a passport or government approved picture identification;

(b) a requirement to provide two bank and personal or business reference letters;

(c) a requirement to provide proof of permanent residential address (utility bills etc.);

(d) a requirement to provide a declaration of source of funds and anticipated activity;

(e) acknowledgement that the applicant was not solicited or contacted in Canada or the United States of America; and

(f) the following disclaimer:

> WWIN International Limited expects that each applicant hereunder will obtain independent financial advice. Each applicant is also expected to obey all laws that they are subject to within their country of residence, including, without limitation, reporting and disclosure requirements.
>
> WWIN International Limited advises each applicant that he or she may be liable for income tax in their country of fiscal residence on income and gains in respect of any account in which the applicant, or any person related to the applicant, has an interest. WWIN International Limited also advises each applicant to obtain independent tax and/or legal advice regarding such matters in his or her country of residence.
>
> WWIN International Limited cannot under ANY circumstances offer or provide any legal, tax, financial or accounting advice, nor make any representations regarding legal, tax, financial or accounting matters to any applicant in any jurisdiction.

VOID WHERE PROHIBITED BY LAW

35. In terms of compliance, WWIN was no different than the many international banks that operate in the Caribbean. In fact, WWIN had a far smaller product range and offered fewer options to its clients than (quite legally) do banks doing business in the Caribbean.

WWIN $2 Million Collateral Mortgage

36. On page 20 of the Report, the Special Master refers to "the $2,000,000 loan from WWIN International to Derek Elliott on or about October 25, 2002"; to Derek Elliott's transfer of the Hillsburgh Stables property to Hillsburgh Stables Inc. "for zero dollars consideration"; and to the "discharge" of the $2,000,000 loan from WWIN. The Special Master states that "[t]here is no documentation submitted which shows how the Elliotts paid off the WWIN 'loan' of $2,000,000."

37. These references are indicative of the Special Master's lack of understanding of the applicable documents themselves and the underlying Ontario real property law. The WWIN mortgage was on its face a collateral mortgage pursuant to which no advances were ever made. Therefore, there was no $2 million loan to be repaid, contrary to the Special Master's uninformed conclusion. The Ontario Land Transfer Tax Affidavit, attached to the Derek Elliott transfer to Hillsburgh Stables Inc., indicates that the transfer was by trustee to beneficial owner. In other words, Hillsburgh Stables Inc. was always the beneficial owner, from the date of the original acquisition of the property in 2002.

38. The Hillsburgh Stables Inc. property was originally purchased in 2002, years before Catledge/Impact (or the Plaintiff) came on the scene. Any suggestion that any Catledge/Impact (or Plaintiff) sourced funds were utilized in this property acquisition is simply absurd.

Non-Use Fees

39. On page 14 of the Report, the Special Master states:

> These products "guaranteed" the investors a certain yearly percentage of return on investment (the rate would range between 7% to 10% paid quarterly) over a period of at least five (5) years, classifying that return as a "Non-Use Fee" or "NUF."

Report at p. 14.

40. The "Residence" contracts, which are referred to here, were timeshare sales contracts. They consisted of a one or two page signature component and a 19 page schedule. This was done at James Catledge's insistence for reasons that subsequently became clear. Acting outside the scope of any agency arrangement with the Corporate Defendants, Catledge/Impact apparently only showed people the one or two page component and not the schedule. This is how Impact was able to so thoroughly misrepresent the nature of the Residence contracts. Any representations of "guaranteed" payments were made by Catledge/Impact and not by the Corporate Defendants (which is a fundamental component of their defense).

41. The "NUF" was not mandatory. The vendor had the option whether or not to use the timeshare unit, which would trigger the NUF obligation.

42. Pursuant to the Residence contracts, alternative accommodations were available during the construction process. Thus NUFs could theoretically be paid if the alternative premises were not utilized by the purchaser. Contrary to the Special Master's statement that there were no operations of a hotel, Sun Village Cofresi was at all times operating and provided the availability of rooms during the construction period – both for Cofresi and Juan Dolio. It appears that the Special Master has not fully analyzed (or even read) the Residence contracts.

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Actions of Legal Counsel

43. In his Report, the Special Master attacked virtually all of the legal counsel presently or previously utilized by the Corporate Defendants and/or by Derek and Frederick Elliott, to the extent known to the Special Master, with the exception of past and present Florida counsel acting in connection with this lawsuit. The allegations made are false, unsubstantiated and without foundation. In making such unjustified attacks, the Special Master must have known that the position of any such counsel who continues to act or otherwise provide assistance would be seriously compromised. These attacks, therefore, appear to have been designed to deprive the Corporate Defendants and/or Derek and Frederick Elliott of the assistance and representation of such counsel.

44. Non-exclusive examples of such unsubstantiated and unjustified attacks include the following:

Rick Davis of Greenberg Traurig

45. On page 8, fn. 8 of the Report, the Special Master makes reference to Rick Davis and Greenberg Traurig being involved in "changing" documents to "remove references to a securities transaction."

46. This allegation is completely inaccurate. Rick Davis is a foremost authority in the United States in the areas of timeshare and fractional ownership. Greenberg Traurig is a major U.S. law firm of the highest repute. Mr. Davis structured a two tier offering for the Juan Dolio project. The first tier involved an exempt securities offering to raise the funds required to construct the project. Once the funds were raised pursuant to the exempt securities offering, the second tier consisted of fractional ownership purchase documents, which securities purchasers could "convert" into, at their option. This sort of structure is apparently quite standard in the United States.

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47. In any event, documents were never "changed" by the Corporate Defendants. However, Catledge/Impact intentionally failed to utilize the exempt securities documents that were provided to them, which were developed on behalf of certain of the Corporate Defendants at a cost of hundreds of thousands of dollars. Catledge/Impact also failed/refused to obtain securities licensing or timeshare licensing, despite their numerous agreements and commitments to do so. These (and other) egregious defaults by Catledge/Impact are the fundamental source of the matters at issue in this lawsuit.

William Lambert of Gardiner Roberts LLP

48. At page 32 of the Report, the Special Master refers to William Lambert of Gardiner Roberts LLP ("Gardiner Roberts"), Toronto, Ontario (both highly reputable) having received "a 5% override on all Bungalow [Cofresi] sales."

49. This statement is incorrect and was likely inserted to create the false impression that Mr. Lambert somehow participated in the success of the enterprise. The only payments ever made to Gardiner Roberts were based on Gardiner Roberts invoices. The Elliott Group *budgeted* 5% of the gross revenues expected from Cofresi Bungalows fractional and timeshare sales to pay all legal costs related to the project, including Gardiner Roberts, Greenberg Traurig, DMK & Asociados (Dominican counsel) and Turks and Caicos counsel, *together with* all marketing costs (including advertising, brochures, promotional expenses etc., but excluding sales commissions).

Conrad Griffiths of Misick & Stanbrook

50. At page 34 of the Report, the Special Master singles out Conrad Griffiths of Misick & Stanbrook in the Turks and Caicos Islands, also a firm of the highest repute, for referral to "appropriate authorities" for investigation of criminal and/or unethical conduct.

51. Mr. Griffiths is a litigator of the highest quality and ethics, who has appeared before the Judicial Committee of the Privy Counsel (the ultimate UK court of appeal) on a

number of occasions. Apart from a couple of previous litigation matters, he has principally acted for the Elliott Group in connection with the claim made in March, 2009 by certain of the (so-called) Plaintiffs in the Turks and Caicos Islands.

52. In relation to Mr. Griffiths and Misick & Stanbrook, the Special Master states: "According to the Prospectus, all subscribers' funds were to be held in trust or escrow by the Misick & Stanbrook firm in the TCI." Report at p. 34.

53. The Special Master does not specify which "prospectus" he is referring to. In fact, prospectuses were prepared in the 2000-2004 period for EMI Sun Village Inc., EMI Cofresi Developments Inc. and EMI Beach Palms Inc. These were all Turks and Caicos Islands prospectuses and they were all approved by the Financial Services Commission of the Turks and Caicos Islands. The prospectuses were in relation to the issuance of shares and had nothing to do with the claims in this litigation.

54. The Financial Services Commission required that subscriber funds be held in trust by Misick & Stanbrook until the closing conditions of the first closing were satisfied. The closing conditions of the first closing generally pertain to project viability. Examples would include achieving a minimum subscription level, obtaining title to the property in question, together with title insurance, entering into certain material contracts etc. Closing conditions for subsequent closings would generally be limited to satisfying conditions in respect of individual subscriptions. The Financial Services Commission was not concerned about Misick & Stanbrook's involvement as trustee of subscription funds for closings subsequent to the first closing.

55. The reference to Conrad Griffiths in this context is completely defamatory. Mr. Griffiths was not even involved in the aforementioned prospectus offerings. Another commercial lawyer at Misick & Stanbrook assisted with those offerings.

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56. Notwithstanding the regulatory approval and legitimacy of the aforementioned prospectus offerings and Mr. Griffiths' complete lack of involvement in them, the Special Master nevertheless makes the reckless recommendation in his Report that Mr. Griffiths be referred to the "appropriate authorities" for investigation of criminal conduct as well as the bar and licensing associations of those jurisdictions in which Conrad Griffiths (and other counsel smeared by the Special Master) are licensed to practice.

The Special Master's Report Reveals a Bias Against the Corporate Defendants, their Principals and Professionals and Critically Damages the Corporate Defendants' Due Process Rights

57. The Report exposes the Special Master's rank bias against the Corporate Defendants, their principals and professionals and critically damages their due process rights. In some instances, the bias is exhibited through the Special Master's unsupported opinions and beliefs, in others it is exhibited by the Special Master's failure to interview the Corporate Defendants' or their professionals, which are the subject of his accusations, who could have provided him with sufficient information to prevent him from making the many inaccurate factual statements, improper inferences and conclusions found in the Report. Instead, the Special Master appears to have relied heavily on the pleadings of the Hofmann and/or Aguilar Plaintiffs[16] and documents and materials which were improperly seized (upon information and belief, pursuant to the laws of the Dominican Republic) from the Corporate Defendants' offices which have not been provided to the Corporate Defendants or their counsel.[17]

[16] After this Court held that the Aguilar Complaints failed to state a claim "even when coupled with the Civil RICO Case Statement," (Omnibus Order at 3 [D.E. 714]) the Aguilar Plaintiffs (James Catledge and the Impact related companies and agents among them) abruptly and voluntarily dismissed their case on October 17, 2009. [D.E. 88, Case No. 09-20657].

[17] The Corporate Defendants respectfully request that the Court order the Special Master to turn over or make available to undersigned counsel all documentary evidence and any transcribed witness testimony for review.

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58. The following are non-exclusive examples of bias in the Report.

59. On page 2 of the Report, the Special Master alleges:

> Approximately $170 million was collected from investors/owners between the Juan Dolio and Cofresi project. That money has now been almost completely lost, though *it is the undersigned's belief that significant monies still remain, in offshore accounts still to be located and/or have been redistributed into other assets*.

Report at 2 (emphasis added).

60. First, the Special Master disingenuously makes reference to $170 million being collected from investors/owners, but does not describe the time frame. The fact is that the figure of $170 million relates to the full history of the business activities of the Corporate Defendants in the Dominican Republic with many different parties, including all acquisitions, construction and offerings. Included in the $170 million is approximately $50 million in equity raised from 1995 to 2004 pursuant to prospectus exempt Ontario securities offerings and Turks and Caicos Islands securities offerings, which were approved by the Financial Services Commission of the Turks and Caicos Islands. Accordingly, the very reference is misleading and improper, because the plaintiffs in this case have yet to prove the Corporate Defendants liable to them for any damages, and even if they could (and the Corporate Defendants submit that they cannot), damages must be determined by the jury not a special master merely accepting as true the allegations in a civil complaint. Second, the Special Master offers his incredible (and wholly unsupported) "belief" that there is money in offshore accounts still to be located and/or that has been redistributed into other assets. Such a statement would be insufficient for a plaintiff's complaint, much less an investigatory report by this Court's adjunct. The truth is that the principals of the Corporate Defendants have declared under oath and penalty of perjury that there is no money in any

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offshore accounts or any other assets available to pay investors.[18] Moreover, the Elliotts, as principals of the Corporate Defendants, have clearly asserted that they have provided every piece of accounting documentation in their possession custody and control to the Special Master and/or this Court since July 17, 2009. Accordingly, any suggestion without proof that Corporate Defendants or their principals have attempted to hide assets flies in the face of the case record.

61. On page 7 of the Report, the Special Master claims:

> The Elliott's purposefully created a sophisticated, complex structure of entities and ownership (as at least one email from the Elliotts admits) which even the most sophisticated Elliott insider would have trouble following without a "cheat sheet. . . . In the undersigned's opinion, having reviewed materials in this case, there is no legitimate reason for the vast extent and nature of the structures created by the Elliotts and their complicit counsel . . . . The only purpose appears to be to create confusion and difficulty for investors and creditors to seek recourse for the Elliotts' (and their employees', agents' and attorneys') improper, possibly illegal acts.

Report at 7.

62. This statement is perhaps more indicative of a lack of understanding of corporate structures, particularly for a corporate group, such as that comprised of the Corporate Defendants, which involved: (a) separate projects; (b) separate investor groups; and (c) operations in separate countries.

63. The structure applicable to the Corporate Defendants (and other Elliott companies) was actually quite simple, being based on the following principles:

64. Each project or business group had a separate corporate structure. For example, the Cofresi project (North coast, Dominican Republic) had its own corporate chain of ownership and the Juan Dolio project (South coast, Dominican Republic) likewise had its own corporate chain of ownership. This is not unusual and, in fact, virtually mandatory, since there were different investor groups in each project.

[18] *See* Hr'g Tr. July 9, 2009 42:16-25; 43:1-13 [D.E. 492]; Declaration of Derek and Frederick

65. Another feature of the Elliott Group corporate structure is that it generally had separate corporations for each country in which the particular structure operated. For example, the Cofresi project included Dominican corporations, which owned the lands in the Dominican Republic and contained the hotel operations. The Cofresi project also included a Turks and Caicos Islands parent for tax planning purposes. Indeed, many or most foreign owned Dominican hotel operations are structured this way.

66. It is a fundamental tenet of corporate structuring to avoid having corporations carry on business in different tax jurisdictions. This can result in double taxation or in unnecessary tax liability.

67. There were more Dominican companies than an unqualified observer like the Special Master may think were required, primarily because parcels of land were acquired by way of share transfers rather than deeds of land, in order to avoid Dominican land transfer tax. Therefore, a project such as the Cofresi project, which was put together through a number of acquisitions, would include a number of Dominican land owning subsidiaries. This was done on the advice of Dominican counsel and is a standard tax planning technique widely used in the Dominican Republic. The Special Master's *ad hominem* and gratuitous observation that: "the only purpose [of the corporate structure] appears to be to create confusion and difficulty for investors and creditors to seek recourse" is simply uninformed, incorrect and spurious.

Sarah Davies

68. At page 33 of the Report, the Special Master attacks Sarah Davies, who was a mid-level managerial person in the Elliott Group, with little or no decision making authority.

69. The Special Master alleges that Ms. Davies "[a]dmitted to the Manager that she shredded 'incriminating' documents following maternity leave (around March of 2009).

Elliott [D.E. 822].

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70. However, as more fully described in the *Affidavit of Sarah Jane Davies in Support of Corporate Defendants' Objection to Special Master Thomas E. Scott's Report and Recommendation Following Preliminary Forensic Analysis* attached hereto as **"Exhibit B,"** this scurrilous allegation is simply false and no such statement was ever made by Ms. Davies.

71. In her Affidavit, Ms. Davies declares in her Affidavit that during one of the interim manager's weekly visits, Kip Rabin asked her what she was working on prior to his arrival as interim manager.

72. Ms. Davies explained to him that she had recently returned from maternity leave and as she was going to be taking on new responsibilities in the Sales & Marketing Department she was cleaning her office in the Real Estate Office and shredding old notes prior to her move to the new Department. Ms. Davies declares in her Affidavit that she never destroyed original files or any important client files or any files for that matter. The real estate department always shredded work notes because it was the department's policy to shred redundant information in order to protect the confidentiality of clients. Ms. Davies honestly advised the Manager of the foregoing and he made his own negative assumptions, never asking her for clarification or further information. *See* Davies Affidavit.

Observations at the Juan Dolio Project

73. At pages 16 and 17 of the Report, the Special Master states:

> The undersigned did indeed visit the Juan Dolio property at the end of June 2009 and was told it was 75% complete, as was the Interim Manager when he visited in August 2009. It was nowhere near 75% complete...Yet, no significant construction occurred, most certainly nothing worth $11,500,000.

Report at p. 16-17.

74. The Special Master's comments are extraordinary. He is not a qualified quantity surveyor, engineer or architect, nor did he employ one to assist him in making this

determination. Further, the Special Master himself did not review the Juan Dolio site in sufficient detail to intelligently comment on this issue. He is simply shooting from the hip. The statement that "virtually nothing was constructed" is patently and demonstrably false.

75. Considerable work had been completed on the project, including, without limitation, demolition and removal, plumbing and electrical work, new doors and windows, new marble and granite tiles, lamps and fixtures, fully renovated bathrooms, and finishing work in literally hundreds of suites, work on the spa, swimming pools and restaurants, a new boiler and related systems and installation of new elevators. Attached hereto as **"Exhibit A"** is an appraisal of the Juan Dolio property, dated April, 2009, prepared by Holsteinson y Asociados, S.A. (civil engineers), who, unlike the Special Master, are qualified quantity surveyors. In Holsteinson's opinion, the Juan Dolio property had an April, 2009 value of $60,832,221, versus a fully completed value of $80,649,986. $60,832,221 divided by $80,649,986 equals 0.754, or 75.4%.

76. In sum, the Special Master has, in effect, acted as a prosecutor – accusing the Corporate Defendants, their principals and professionals of, among other things, orchestrating a ponzi or "ponzi-style" scheme, money laundering and tax evasion. The Corporate Defendants strenuously object to such defamatory statements, but the publication of the Report let the genie out of the bottle. The Corporate Defendants' due process rights have been critically damaged, because the Special Master has essentially adopted the Hofmann and now dismissed Aguilar Plaintiffs' allegations "with one major exception." Report at 5, fn. 5.

77. It is hard to envision a more striking example of a rush to judgment, and the dangers attendant to drawing inferences and conclusions on an incomplete evidentiary record than the Special Master's Report. By his own admission, the Special Master's conclusions are, at a minimum, grossly premature, as the Report is based on what is termed a "preliminary" forensic

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analysis. What is worse, the Special Master advises that "not all of the information (or the basis for the recommendation of referral) is reported herein." Report at 5.

78. The simple fact is that the Corporate Defendants have not had the opportunity to see, challenge or explain evidence the Special Master has admittedly withheld from his report, but upon which he relies for his conclusions. The Special Master attempts to justify this by suggesting that he is protecting his "work product"[19] and his fear that the release of too much information will jeopardize any future criminal investigation. Report at 5. But where does that leave the due process rights of the Corporate Defendants? Are they to be expected to suffer the outrage of having false and misleading statements made about them, their principals, employees and professionals without having an opportunity to challenge the sufficiency of the evidence arrayed against them? Are the Corporate Defendants not entitled to refute the basis for the Special Master's conclusions of law and fact with the very evidence upon which the Special Master relies?

79. The Corporate Defendants seek nothing more than their right to due process which has been materially and adversely affected by the Special Master's reference to withheld evidence and/or alleged "work product." Accordingly, the Special Master's Report must be disregarded.

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[19] The Special Master cites to the Omnibus Order [D.E. 714] for his assertion that he is withholding support "per the Court's instruction" to protect his work product; however, it is unclear exactly what in the Omnibus Order the Special Master is referring too, because nowhere in the Omnibus Order does it state that the Special Master is authorized to withhold "explicit, detailed support" from the Report to protect the Special Master's "work product." There is discussion of a charging lien being placed on the information underlying the pending forensic report, but are the Corporate Defendants to read this to mean they only get to see and challenge the sufficiency of evidence forming the basis for the Special Master's conclusions if they pay for it? To be clear, the Corporate Defendants are not using the Special Master "as a resource" and are entitled to see, challenge and explain any evidence used by the Special Master that forms the basis of the incendiary allegations against them, their principals and their professionals.

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CONCLUSION

WHEREFORE for the reasons set forth herein, the Corporate Defendants respectfully request that the Court (1) revoke the appointment of the Special Master; (2) disregard the factual and legal conclusion made in the Report; (3) order that no party may refer to the factual or legal conclusions made in the Report as determined fact or law; (4) order that this Objection be posted on the Hofmann Plaintiff's website as was the Report; (5) remove the Report from the "Orders and Opinions" section of the Southern District of Florida's website; and (6) granting such other and further relief as this Court deems just and proper.

Dated: December 16, 2009
Miami, Florida

s/ James C. Moon
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

s/ James C. Moon
James C. Moon

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-20526-CIV-GOLD/MCALILEY

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